

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

MICHAEL J. MYERS,

Plaintiff,

v.

JASON GANT, in his official capacity
as Secretary of State for the State of
South Dakota.

Defendant.

Civ. Case No. 14-4121

**GANT'S MOTION TO DISMISS
PURSUANT TO F.R.CIV.P. 12(b)(7)
AND 12(b)(6)**

Defendant Jason Gant ("Gant"), by and through his counsel of record, Assistant Attorney General, Richard M. Williams and Assistant Attorney General Ann F. Mines, hereby respectfully submit this Motion to Dismiss for failure to join an indispensable party under Fed.R.Civ.P. 12(b)(7) and failure to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6).

Defendant moves to dismiss the complaint pursuant to Fed.R.Civ.P. 12(b)(7) for failure to join a party. Defendant maintains that these proceedings directly affect the rights of Laura Hubble and Caitlin Collier in that Plaintiff seeks to remove Collier, who was properly nominated and placed on the ballot, with Hubble, his current candidate of choice. Defendant further asserts that relief sought by Plaintiff cannot be had unless Collier and Hubbel are parties.

Defendant also asserts that Plaintiff's Complaint fails to state a claim under Fed.R.Civ.P. 12(b)(6). Plaintiff's Complaint alleges that his inability to now switch lieutenant governor candidates violates his rights under the First

and Fourteenth Amendment. In context of the State's nominating procedures for governor and lieutenant governor, Plaintiff's contentions do not state a claim as a matter of law and should be dismissed.

This motion is further supported by the accompanying Memorandum in Support of Defendant's Motion to Dismiss and Response to Plaintiff's Memorandum in Support of Preliminary Injunction at attachments thereto.

Dated this 7th day of August, 2014.

MARTY J. JACKLEY
ATTORNEY GENERAL

/s/ Richard M. Williams
Richard M. Williams
Assistant Attorney General

/s/ Ann F. Mines
Ann Mines
Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Gant's Motion to Dismiss Pursuant to F.R.Civ.P. 12(b)(7) and 12(b)(6), Gant's Memorandum in Support of the Motion to Dismiss and Response to Plaintiff's Memorandum in Support of Preliminary Injunction and Affidavit of Richard M. Williams with attached exhibits was filed in the above captioned matter electronically through the CM / ECF system, upon the following person:

Edward K. Welch
edwardkwelchlaw@gmail.com

Dated this 7th day of August, 2014.

Respectfully Submitted

/s/ Richard M. Williams
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